

E-FILED on January 8, 2007

Annette W. Jarvis, Utah Bar No. 1649
 Steven C. Strong, Utah Bar No. 6340
 RAY QUINNEY & NEBEKER P.C.
 36 South State Street, Suite 1400
 P.O. Box 45385
 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

Lenard E. Schwartz, Nevada Bar No. 0399
 Jeanette E. McPherson, Nevada Bar No. 5423
 SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 E-Mail: bkfilings@s-mlaw.com

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Chapter 11
 Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND,
 LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

**REPLY IN SUPPORT OF OBJECTION
 TO PROOF OF CLAIM NO. 784
 FILED BY BINFORD MEDICAL
 DEVELOPERS LLC
 (AFFECTS USA COMMERCIAL
 MORTGAGE COMPANY)**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Date: January 17, 2007
 Time: 9:30 a.m.

SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 · Fax: (702) 892-0122

SCHWARTZ & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 · Fax: (702) 892-0122

USA Commercial Mortgage Company (“USACM”), by and through its counsel, hereby files its Reply (the “Reply”) on its “Objection to Proof of Claim No. 784 Filed by Binford Medical Developers LLC” (the “Objection”), and states as follows:

1. On April 13, 2006 (“Petition Date”), USACM, USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with DTDF, the “Funds”), and USA Securities, LLC (“USA Securities”) (collectively the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Management duties of USACM are conducted by Thomas J. Allison of Mesirow Financial Interim Management, LLC (“Mesirow”) who serves as the President and Chief Restructuring Officer.

2. Claimant Binford Medical Developers LLC (“Binford”) filed its Proof of Claim No. 784 on November 9, 2006, claiming an unsecured debt of \$3,502,383 for “Breach of Contract, Intentional Misrepresentation and other theories in attached Complaint” (“Claim”). The complaint attached to the Claim (“Complaint”) was filed in Adversary Proceeding No. 06-1212 commenced against USACM on November 7, 2006 (Docket No. 1752).

3. USACM filed its Objection (the “Objection”) to the Binford Proof of Claim on December 11, 2006, as Docket No. 2033.

4. Binford filed its “Opposition to USA Commercial Mortgage Company’s Objection to Proof of Claim No. 784 Filed by Binford Medical Developers LLC” (the “Opposition”) on December 29, 2006, as Docket No. 2329.

5. In its Opposition, Binford concedes that the amount of its claim for allowance purposes under 11 U.S.C. § 502(b) is subject to further Court proceedings, and is subject to disputes of fact. Opposition at p. 2. While it is undisputed that Binford has no claim against the Direct Lenders for the Binford Loan, USACM agrees that there are disputes concerning the allegations of breach of contract that Binford asserts as support for its Proof of Claim against USACM, and USACM asserts as support for rejection of Binford’s right to a claim against USACM under the Binford Proof of Claim. Moreover, in its Opposition, Binford concedes that its damages are unliquidated and contingent and need to be estimated under 11 U.S.C. § 502(c).

1 Opposition at p. 4.

2 6. USACM asserts that USACM's Objection and Binford's Opposition have given
3 rise to a contested matter under Bankruptcy Rule 9014, and that all of the Bankruptcy Rules on
4 discovery as outlined in Bankruptcy Rule 9014(c) should be made applicable in this contested
5 matter. USACM requests that a scheduling conference be scheduled for this contested matter.
6 USACM also requests that the Court grant such other and further relief as it deems just and
7 proper.

8 Respectfully submitted this 8th day of January, 2007.

9
10 /s/ Lenard E. Schwartzer, Esq.

11 Lenard E. Schwartzer, Nevada Bar No. 0399
12 Jeanette E. McPherson, Nevada Bar No. 5423
13 SCHWARTZER & MCPHERSON LAW FIRM
14 2850 South Jones Boulevard, Suite 1
15 Las Vegas, Nevada 89146

16 and

17 Annette W. Jarvis, Utah Bar No. 1649
18 Steven C. Strong, Utah Bar No. 6340
19 RAY QUINNEY & NEBEKER P.C.
20 36 South State Street, Suite 1400
21 P.O. Box 45385
22 Salt Lake City, Utah 84145-0385
23
24
25
26
27
28

908252

SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122